to accept and the omission of the holder to give notice of non-acceptance to the defendant.

Judgment accordingly.

Affirmed on appeal by the court in *banc*.

ALLEN, HUBBARD and PRATT, JJ.

Supreme Court of Pennsylvania, May, 1852.

SCHRIVER ET AL. *vs.* MEYER.

A testator, by his will, proved in 1829, devised as follows: "*Principally and first* of all, I commend my soul into the hands of Almighty God who gave it, and my body to the earth, to be buried in a decent and Christian like manner, at the discretion of my executors hereinafter named, and as to such worldly estate wherewith it has pleased God to bless me in this life, I give and dispose of the same in the following manner, to wit: *Item*, it is my will, and I order and direct that all my just debts and funeral expenses shall be first paid and satisfied. *Item*, it is my will, and I give, devise and bequeath unto my beloved wife, Elizabeth, eighty-five acres, and allowance of land of my dwelling plantation, whereon I now live, situate in Springgarden township, in the county aforesaid, she to have the choice of the same wherever she thinks proper; and further, I do give and bequeath unto my said wife, all my moveable property or personal estate, of what kind or nature the same may be, together with all the monies due me, by bond, note or book account, to and for her only proper use and behoof whatever. *Item*, it is further my will, that my brother and sisters divide the residue of my said plantation amongst themselves, share and share alike.

Held, that the introductory words might be brought down to interpret the subsequent devise to the wife, and that they enlarged it into a fee. Weidman *vs.* Maish, 4 Harris, 504, overruled. GIBSON, J., *dissenting*. BLACK, C. J., *also dissented*.

Error to the Common Pleas of York County.

John Meyer, of York County, Pennsylvania, on the 2d of September, 1827, made his will in the following words:

In the name of God, amen, I John Meyer, of Springgarden township, in the County of York and State of Pennsylvania, farmer,

being weak in body but of sound mind, memory and understanding, blessed be God for the same; but, considering the uncertainty of this transitory life, do make and publish this my last will and testament, in manner and form following, to wit: Principally and first of all I commend my soul into the hands of Almighty God, who gave it, and my body to the earth, to be buried in a decent and christian like manner, at the discretion of my executors hereinafter named; and as to such worldly estate wherewith it has pleased God to bless me in this life, I give and dispose of the same in the following manner, to wit: Item it is my will, and I order and direct that all my just debts and funeral expenses shall be first paid and satisfied; item, it is my will, and I give, devise and bequeath unto my beloved wife, *Elizabeth*, eighty-five acres, and allowance of land of my dwelling plantation, whereon I now live, situate in Spring-garden township, in the county aforesaid, she to have the choice of the same wherever she thinks proper; and further, I do give and bequeath unto my said wife, all my moveable property or personal estate, of what kind or nature the same may be, together with all the monies due me, by bond, note or book account, to and for her only proper use and behoof whatever. Item, it is further my will, that my brother and sisters divide the residue of my said plantation amongst themselves, share and share alike; and lastly, I nominate and appoint my beloved friends, Michael Schriver and John Lefever, of the township aforesaid, to be the executors of this my last will and testament, hereby revoking all other wills, legacies and bequests by me heretofore made, and declaring this and no other for my last will and testament. In witness whereof, I have hereunto set my hand and seal, this second day of September, one thousand eight hundred and twenty-seven. Signed, sealed, published, pronounced and declared by the testator, as and for his last will and testament, and in presence of us and at his request, have subscribed our names as witnesses.

N. B.—The words five acres and allowance interlined before signing.

This will was duly proved on the 15th of June, 1829.

The question in controversy was, as to whether the devise to the testator's widow, Elizabeth Meyer, was in fee or for life only. The same point had been presented in the previous case of *Weidman* vs. *Maish*, reported in 4 Harris, 504, in which the Court below (Lewis, President,) held that the devise was in fee, and after repeated arguments in this Court, both orally and on paper, the judgment of the Court below was finally reversed by a majority of this Court, C. J. Gibson delivering the opinion at the adjournment at the last term, and Justices Coulter and Chambers filing their dissent.

Another suit was brought by the same counsel for another party claiming an undivided sixth part of the land; and the Court below said, that without intimating any opinion of their own or examining the question, they would enter judgment in accordance with the former case; and they left the question to be settled by this Court. The plaintiffs in error were therefore the defendants below in this case.

The opinion of the majority of the Court was delivered by

Lowrie, J.—So far as relates to the intent of the devising clause, this will was disposed of in a former opinion of this Court in one sentence, and the remainder of the opinion was devoted to a clause which is entirely unimportant. The true point of this case is thus dismissed—"as to the common introductory words, it is enough to say there is nothing in particular to which they can attach; and it has long been held that they are inoperative by themselves." It is with most sincere reluctance, that we find ourselves constrained to declare that this conclusion of our predecessors is opposed to the whole current of Pennsylvania decisions, and would in almost all similar instances, frustrate the manifest intent of the testator.

As in the case of *Harper* v. *Blean*, 3 Watts., 471; this testator "had no other real estate than that described in the will. He had no issue, but left his wife surviving. He left also, brothers and sisters, under whose right the plaintiff claims." Nearly his whole fortune was the result of the efforts of himself and wife, and he

had no intimacy with his brothers and sisters, most of whom lived at a distance from him. Under such circumstances, it would not have been unreasonable if he had given all he had to his wife, and certainly common justice would declare her claims to stand much higher than those of the brothers and sisters.

But we may set aside all this, except the fact that he had no other land than that described in the will, and construe this will without the aid of any other extraneous circumstances. It sets out with the usual introduction, then directs as to his burial, and then says, "As to such worldly estate wherewith it hath pleased God to bless me in this life, I give and dispose of the same in the following manner." Then he directs payment of his debts, and then gives a particular part of his plantation to his wife, and the rest to his brother and sisters.

In the case of *Weidman* v. *Maish*, 16 State Rep., 504, this devise to the wife was held to create a life estate, and we know of no similar decision in our books, except the case of *Steel* v. *Thompson*, 14 S. & R., 88, which is an exceptional case, in opposition to prior ones, attempting to overrule one of them. *French* v. *McIlhenny*, 2 Binn., 13, decided by a majority of the Court against a strong dissent, and never since received as law, so far as we know.

The words "as to such worldly estate," &c., if they have nothing to which they can attach, must of course be inoperative. Here, however, they are most directly attached to the words "I devise *the same*," &c., what follows, then, is most plainly a specification of the manner in which his "estate" is to be disposed of, and this brings the case explicitly within that large class of cases wherein the devise of the testator's "estate" is held to carry a fee, and the whole spirit of these decisions is violated by declaring this a life estate. In the case of *Busby* v. *Busby*, 1 Dal., 226, it was declared that similar words, "unconnected with any particular devise, show an intention to dispose of his whole estate," and will help the interpretation in case of doubt. In *Caldwell* v. *Ferguson*, 2 Yeates, 250, 380, there were no words of inheritance, but a fee was raised by the words "touching such worldly estate, &c., I give *the same* in the following manner." And it was there declared that the

general clause was connected with the rest of the will by the phrase "I give *the same.*"

In *Doughty* v. *Brown*, 4 Yeates, 179, the words were "touching all my worldly effects, real and personal, I dispose thereof in the following manner." And the Court say that these words "fully evince his intention of disposing of all his property."

In *French* v. *McIlhenny*, 2 Binn., 13, "As for such estate, &c., I give *the same* in the following manner," were held sufficient to carry a fee without anything to aid them. In *Cassel* v. *Cooke*, 8 S. & R., 289, a somewhat similar introductory clause is used in aid of the construction, and the Court say, "It is declared by the testator that he intends to dispose of all his worldly estate, out and out. This will not of itself be sufficient to give a fee; but it is always carried down to the devising clauses to show the interest." And the same principle runs through the case of *Campbell* v. *Carson*, 12 S. & R., 54, and going a little out of the order of time, the case of *Johnson* v. *Morton*, 10 State Rep., 245. In *McClure* v. *Douthitt*, 3 State Rep., 446, the words are "as to my worldly estate, I dispose of it as follows." And there the testator gives to his daughter a tract of land. The Court say, "We ought to have done at first in regard to words of inheritance, what our Legislature has done at last by declaring every devise to be a fee which is not specially restricted. The devise to the testator's daughters, therefore, was a fee even as the law then stood." In *Miller* v. *Lynn*, 7 State Rep., 443, the Court in speaking of similar words, say "the words in the preamble make it apparent that he intended to dispose of his whole estate. Although, therefore, there are no words of limitation or perpetuity added to the devise to the children, yet as there is no limitation over, we bring down the word estate in the preamble, and connect it with the devise in order to effectuate the intent." In *Peppard* v. *Deal*, 9 State Rep., 140, speaking of a devise of a house and the words "as to my worldly estate," the Court say "the language in the introduction is carried down to the devising clause to explain the intent." In *Hardin* v. *Hays*, 9 State Rep., 151, the Court say "it is very evident from the introductory clause, that the testator had no intention to die

intestate, but that in this case as in almost all others, he supposed he was devising his whole estate. When the word estate is coupled with a devise of real estate, it is uniformly held to be a fee simple; and this is carrying out the intention of the testator ninety-nine cases out of one hundred." Here the word estate in the introduction, was coupled with the devising clause exactly as in this case—"I give and dispose *the same* as follows." In *McCullough* v. *Gilmore*, 11 State Rep., 370, even less definite language, "all my worldly substance and property shall be disposed of in the following manner," was held to give a fee. "These words, say the Court, and the like of them are generally carried down into the corpus of the will, to show that the testator meant to dispose of his whole interest in a particular devise, unless words are used which plainly indicate an intent to limit."

With such unquestionable authority for declaring this devise conveys a fee simple to the testator's widow, it would be a waste of time to go over the decisions in England and in other States, and we content ourselves with a mere reference to some of them. *Denn* v. *Gaskin*, Cowper 660; *Loveacres* v. *Blight*, *Ibid*, 335; *Trogmorton* v. *Holliday*, 3 Burrows, 1618; *Kennon* v. *McRoberts*, 1 Wash., 96; *Wiatt* v. *Sadler*, 1 Munf., 537; *Watson* v. *Powell*, 3 Call., 306; *Winchester* v. *Tilghman*, 1 Harr. & McH., 452; *Jackson* v. *Merrill*, 6 John, 191; *Fox* v. *Phelps*, 17 Wend., 393 and 20, *Ib.*, 437; *Fogg* v. *Clark*, 1 N. Hamp., 163; *Franklin* v. *Harter*, 7 Blackf., 488.

It is among the oldest legal principles that a devise of all one's estate carries a fee; and what else is this? If we shorten the devise so as to make the sense more striking, it will stand as follows: as to all my worldly estate, I devise the same as follows: one farm to my wife, and the other to my brother and sisters; or thus: I devise all my worldly estate as follows: my personal property and half of my plantation, to my wife, and the other half of my plantation to my brother and sisters. In this form, can any one doubt its true interpretation?

It is really much more plainly a fee to each than in the cases of *Taylor* v. *Kocker*, 3 W. & S., 163, where the devise was of all his

"leasehold estate," and *Harper* v. *Blean*, 3 Watts, 475, where the effective words were "with whatever is not named that I have any right or claim to in law or equity," and *Dice* v. *Sheffer*, 3 W. & S. 419, where the words "all what I have, both real and personal property," were declared equivalent to "all my estate." It is stronger than *Neide* v. *Neide*, 4 R. 75, where the devise was "I give to my son John my late purchase from Elizabeth Clarton, and also four acres of woodland, being in a corner, &c."

How all this line of decisions was broken through in the case of *Weidman* v. *Maish*, we cannot say, but must presume that it was inadvertently done, in the crowd of business which presses on this Court, and which must occasion frequent mistakes. If they were intended to be overruled, they deserved, in their rejection, a much more ceremonious eulogy than can be comprised in a single sentence; for great have been the merits, and much good have they done in the last seventy years.

The testator gives to his wife 85 acres of his plantation, and the "residue of his plantation" to his brother and sisters, but the plain and natural meaning of this is, not that he gives his wife a life estate in one part, and his brother and sisters a fee in the rest, and also in his wife's part after her death. This phrase, in wills, has not yet been cast in the moulds of technical expression, and thus removed from interpretation of common sense. It has still sufficient pliability to fall with ease into its appropriate place, and with its proper value, in an instrument written in ordinary language. And so was a similar provision disposed of in the case of *Neide* v. *Neide*, 4 R. 82.

But it is demanded of us that we shall follow the decision in *Weidman* v. *Maish*, where this very devise has received a construction. And why must we follow it? If the law was totally misapplied in that case, when one forty-fourth part of this land was in controversy, must we therefore continue to misapply it as often as the other shares come up for discussion? Because we or our predecessors have wronged one man by our blunders, must we therefor wrong forty-three others for the sake of our own consistency?

If not thus, then on what principle can we do it? Not simply because this very devise has been decided on: most clearly not. This would be presenting the doctrine of former recovery in a new aspect. One verdict and judgment are not conclusive even in the very same interest, and between the very same parties; whereas this would make one verdict and judgment, as to one interest and one set of parties, conclusive as to all similar interests and as to other parties, even though not heard.

Does the doctrine of *stare decisis* hold us to conform to that decision? I trust that the doctrine shall never be held to mean, that the last decision of a point is to be taken as the law of all future cases, right or wrong. Then, indeed, will the isolated blunders of this Court be of far more force than an Act of Assembly or a clause of the Constitution, for they may invade the inviolability of contracts. This is certainly a new phase of the doctrine of *stare decisis*, that is most suicidal in its results. It is setting aside the old doctrine, and establishing a new one. It is a declaration that all courts of the last resort must have been in error every time they have acknowledged and set aside former errors, which has not been an unfrequent event. Nay, more; it is claiming for this Court an infallability that can have no result but the perpetuation of the most incompatible errors.

As I understand this doctrine, it is tersely expressed in the maxim *minime sunt mutanda quae interpretationem certam semper habuerunt;* and is well qualified by that other one, *quae contra rationem juris introducta sunt, non debent trahi in consequentiam*, both of which are used by Lord Coke, and are derived from the Roman law. It is well explained in Lieber's Pol. Herm. 209. "In a free country, where a knowledge of the citizens' rights is all important, a precedent in law, if correctly and clearly stated—this is an essential requisite—and if applied with discernment, and with the final object of all law before our eyes, ought to have its full weight. If there has been a series of uniform decisions on the same point, they ought to have the force of law, because, in this case, they have become conclusive evidence of the law." And the same writer has well estimated the value of a mere decision, when he

says, 1 Pol. Ethics, 265, "there is hardly such a thing as judge-made law, but only judge-spoken law. The doctrine pronounced to-day from a bench may, indeed, not be found in any law book; but the judge has ascertained and declared the sense of the community as already evinced in its usages and habits of business. If he has not expressed it correctly, society will show its sovereign power, his decision will be reversed to-morrow, or corrected by statute."

The true doctrine on this subject was declared and acted upon by this Court in *Geddis* v. *Hawk*, 1 Watts, 286, and *Cowden's Appeal*, 1 State Rep. 279, and is thus laid down by Chancellor Kent: (Com. Lect. 21,) "I wish not to be understood to press too strongly the doctrine of *stare decisis*, when I recollect that there are a thousand cases to be pointed out in the English and American books of reports which have been overruled, doubted, or limited in their application. It is probable that the records of many of the courts in this country are replete with hasty and crude decisions; and such cases ought to be examined without fear, and revised without reluctance, rather than have the character of our law impaired, and the beauty and harmony of the system destroyed by the perpetuity of error. Even a series of decisions is not always conclusive evidence of what is law, and the revision of a decision very often resolves itself into a mere question of expediency, depending upon the consideration of the importance of certainty in the rule, and the extent of property to be effected by a change of it."

Suppose that we now assert that a devise such as this does not convey a fee simple, what will be the consequence? First we defeat the intention of this testator, and wrong his devisees. Then the cases of *McClure* v. *Douthitt*, *Miller* v. *Lynn*, *Peppard* v. *Deal*, *Harden* v. *Hays* and *McCullough* v. *Gilmore*, were all decided within a very few years on the opposite principle, and all these cases will claim the right to be reheard, and all the titles acquired on the faith of those decisions may be declared invalid. How many are the wills similarly worded, which have never been heard of in Court, because their construction has been considered as settled by former decisions, it is impossible to tell. We dare not say that the

principle of this case shall be limited to this will, for this would be making the rights of the parties depend on the will of the judge, and not on the law of the land. We cannot do justice in this case without rejecting the decision in *Weidman* v. *Maish*, and reversing this judgment.

Judgment reversed, and judgment for defendants below, with costs.

GIBSON, J., *dissenting*.—It is said, in the opinion of the majority, that when this will was before the judges who composed this court, in *Weidman* v. *Maish*, the introductory words were disposed of in a single sentence; and that the rest of the opinion was devoted to a clause entirely unimportant. We, however, followed the course of the argument; for, the fact is, the effect of these words was not relied on by the counsel in that case, who have made it a successful point in this. They cast it from them; and though the counsel on the other side spoke to it in anticipation, no one, whether counsel or court, harbored a thought that the devise of the land, unconnected with the bequest of the personal property, would give the fee with or without the introductory words. The counsel who have argued for the larger interpretation have shifted their ground; but, on that occasion, they rested their case on the supposed blending of the real and personal estates in one gift; and whether they were so blended was the question argued and the question decided. They have since picked up their derelict argument, and succeeded with it. The opinion of the majority is rested on the introductory clause as an interpreter of what is too plain to admit of interpretation. What is the office of an introductory clause when it is suffered to have an office. "Such introductory words, says Chancellor Kent, 4 Com. 541, "are, like a preamble to a statute, to be used only as a key to disclose the testator's meaning." Then, before it can be used, the meaning must appear to be locked up. But treat them as a preamble to a statute and they will produce the same result; for the preamble is never invoked to expound the meaning of words too clear to admit of exposition. "In doubtful cases," it is said, in Dwarris on Stat. 655, "recourse may be had to the preamble to discover the inducements

the legislature had to the making of the statute; but when the terms of the enacting clause are clear and positive, the preamble cannot be resorted to. Let any lawyer say whether the legal effect of any terms could be more clear and positive than the legal effect of the words, "I give, devise and bequeath to my beloved wife Elizabeth, eighty-five acres, and allowance of my land of my dwelling-place whereon I now live." Why, then, bring down introductory words to the operative clause to obscure what is as clear as a sun-beam to a professional eye without them? Had the testator intended to make them words of devise he would have brought them down himself. What if he would not? His intention must prevail; but he must express it in positive, not inferential, words, to show what it actually was. Without such words, it may be a subject of guess, but not of adjudication. *Voluit sed non dixit* is the legal aphorism. Lord Mansfield was right in saying that perhaps every devisor means to give a fee when he does not explicitly give less. Yet even he, with all his boasted liberality of opinion and disregard of technicality, shrunk from the task of giving effect to this putative intention, without definite and direct words to declare it. It had been well if the courts had started with the principle, since prescribed for prospective cases by English and American legislation; but to overturn their intermediate adjudications would uproot titles and produce general consternation. It is for this reason that the English and American judges have excluded extraneous influences and gone, in unambiguous cases, by the direct words of the devise, without inferences, from the introductory words. "It is established," as it is said in 2 Jarman on wills, 187, "that the word *estate*, occurring merely in the introductory clause in the will, by which the testator professes in the usual manner to dispose of all his worldly and temporal estate, will not have the effect of enlarging the subsequent devises in the will." The same principal is repeated in Powell on Devises 416; and there is not an exception to it in the English books, unless *Grayson* v. *Atkinson*, 1 Wilson, R. 333, be one. There were several elements in the constitution of that case: the decisive ones of blending the real and personal estate in the same disposition,

and charging the land with debts and legacies. It is not clear on what ground Lord Hardwicke put his opinion; and the case cannot be deemed an authority for anything in particular.

It is assumed in the opinion of the majority, that this unbroken current of decisions elsewhere, has been rolled back by a counter-current of our own, insomuch as to bring down from the lumber-garret of the scriviner's cranium, the hacknied form of introductory words, in order to stick it into the operative clause as a part of it, and hitch it to any thing in the form and dimensions of an indefinite devise. It is not assumed that the words of it give a fee *proprio vigore;* nor could it be, for, standing alone, they mean nothing, or that the testator, having done with the usual legacy of his soul, and with directions about his funeral and the payment of his debts, was going to dispose of the residue of his property among the objects of his bounty. Like the "grace of God" in a policy of insurance, they are words of course which serve as a prologue to the business in hand, taken from the scrivener's formulary, and put down preparatory to putting down the testator's devises and legacies. Notwithstanding their stereotyped occurrence on every will drawn by an unprofessional hand, it is insisted that wherever there is any thing to hang them on, it takes their hue and becomes a devise in fee. If that is not the effect attributed to them, in what case can they have any other? And if they are to have that effect in any unambiguous case, they must have it in every case. Have the decisions of this court produced a state of things so anomalous?

The first of them is *Busby* vs. *Busby*, 1 Dall. 226, which I respectfully submit has been misapplied. The general principle is pertenaciously maintained in every part of it. It was said the words, "as to all my worldly estate in the beginning of a will, unconnected with any particular devise, show an intention to dispose of the testator's whole estate, but will not carry an estate which was *clearly omitted*; but if it be dubious whether it has been omitted or not, it will help the interpretation." With what devise in this will are those words particularly connected? with the devise to the widow, or with the devise to the brother and sisters? or is it at all

dubious that words to carry the fee are omitted in a devise of eighty-five acres?

Caldwell vs. *Ferguson*, 2 Yeates 250, the next case invoked, was a nisi prius decision; but it was well ruled. The word estate when incorporated in the body of a devise, and not used to individuate the subject of it, carries the testator's entire interest. "Touching such worldly estate wherewith it has pleased God to bless me," said the testator, "I give *the same.*" What? His estate to which the effective words of the devise were immediately directed. The word could not be brought down to the devise, for it was there already. The whole was contained in one paragraph; and the meaning of it was as clear as if the word "estate," had been put in the place of the words "the same." We know not on what ground the court put its opinion, for none is stated in the report; but the devise was of woodland, which has always been held to carry a fee.

Then came *French* vs. *McIlheney*, which certainly overcame us like a summer cloud, but not without our special wonder. It had been ruled at the circuit by Judge Yeates; but on what particular ground we know not; and according to the course of the court, then composed of three judges, the cause was heard on appeal by Chief Justice Tilghman and Judge Brackenridge. The Chief Justice took the ground I have occupied in this instance; but Judge Brackenridge, whose notions about the propriety of rules to work out the intention of a testator were peculiar, adopted the popular meaning, independently of words of limitation or perpetuity; and the judgment was affirmed. Judge Duncan has told us in *Cassell* vs. *Cook*, 8 Serg. & R. 288, that this opinion of the judge was announced as a declaration of independence; and that Judge Yeates disclaimed it, as he certainly did indirectly in *Clayton* vs. *Clayton*, 3 Binney 490. There is something plausible in the notion that common sense is more likely to reach the actual intent, than artificial rules of construction. But wills are not always penned by men of common sense. They frequently afford no clue to the testator's meaning which common sense can lay hold on. The meaning might seem clear to a man of good sense at the first blush; but, such is

the imperfection of language, it might to a man of equally good sense seem clear the other way. In such a case, what could be done? Leave it to a jury to ascertain the intention? We know how far plain sense goes to produce unanimity in a jury box. The destination of the property would be left to chance or endless litigation. Besides, by reason of the happening of unforeseen and unprovided for contingencies, it is sometimes an unavoidable duty to suppose a testator to have had an intention where there actually was none. Without a rule to conduct him to a conclusion, what could a judge do? Rules of interpretation, though they do not always effect the actual intent, produce certainty of result, stability of title, ultimate repose, and prevent the value of the property, thrice told, from being sunk in lawsuits; against which, a departure from the popnlar meaning weighs not a feather. In *Findlay* vs. *Riddle*, 3 Binney 161, that distinguished judge (for Judge Brackenridge, though failing in respect for precedent, was certainly distinguished for intellectual vigor in the investigation of legal principles) resorted to a grammatical analysis of a devise—an unsafe expedient, for every one knows how much the transposition or substitution of a word may change the tone of the whole. *French* vs. *McIlhenny*, is an authority for, rather than against, what I take to be the orthodox doctrine.

In *Campbell* vs. *Carson*, 12 S. & R. 56, the introductory words were legitimately resorted to in order to explain the ambiguous words, "to be by her fully possessed and enjoyed"—a use of them sanctioned by *Busby* v. *Busby*. In *Johnson* v. *Morton*, 10 Barr, 245, there were no introductory words at all; and in *McClure* v. *Douthitt*, 3 Barr, 447, no more was decided than had been decided in Westminster Hall, that the word 'share' was sufficient of itself to pass the testator's entire interest. True, it was said we ought to have done at first what the legislature has done at last; but it was not said that it was not too late to do it now at the expense of those who have purchased titles supposed to have been long judicially settled.

So far the decisions of this court have been consistent, but adverse to the principle for which they have been cited. But in

Miller v. *Lynn*, 7 Barr, 443, a devise ushered with the usual flourish of trumpets was held to pass a fee without words of limitation or perpetuity, or any of their equivalents. That case was a railroad accident. I agree that if it be law it rules the present; but I have never known a more bold or reckless innovation. Even the rule in Shelly's case was denied in it to be a rule of property in Pennsylvania. Why a dissent was not marked in the report of the case I know not; but I know that Mr. Justice Bell and myself did not concur. The pressure of business left little time for consideration, and we were compelled to go at railroad speed, so that much depended on the judge who prepared the opinion, which, unseen by the rest of the court before it was delivered, too often exhibited his peculiar notions. The opinion of the learned judge was a second declaration of independence. No authority was cited for it, but the decision was rested on the effect of the introductory words, though there was no ambiguity in the devising clause. Its intrinsic evidence shows that the case was not deliberately considered.

Peppard v. *Deal*, 9 Barr, 149, is also cited; but though certain dicta of the judge who delivered the opinion in that and the preceding case, would seem to favor the argument, the judgment, which was alone the act of the court, does not. "As to my worldly estate," said the testator, "I devise the house in which I now live to my son Samuel; and the remainder of my *estate, real* and *personal*, among my children." There were two features in this devise, either of which gave the children a fee, but which were not touched in the opinion—an immediate gift of the property as the testator's estate, and a jumbling together of the real and personal estates. *Harden* vs. *Hayes*, id. 151, is in the same category: the land was charged with money, and expressly for that reason the estate was enlarged to a fee.

McCullough v. *Gilmer*, 1 Harris, 320; *Saylor* vs. *Kocher*, 3 W. & S. 163; *Harper* vs. *Blean*, 3 Watts 471; *Neide* vs. *Neide*, 4 Rawle, 75, and *Dice* v. *Shaeffer*, 3 W. & S. 419, are cases in which an intention to dispose of the fee was as clearly expressed and con-

clusively disclosed as it could be, without technical words of limitation.

These are the cases adduced to show that this court had shaken off the rule in England and our sister States; and it must be left to future judges to say whether it has done so. The importance of the doctrine of *stare decisis* in cases which involve title to land, I leave to the consideration of the profession, and emphatically of the owners of real estate. I am therefore of opinion that the construction made of this will when it was here before ought not to be disturbed.

BLACK, C. J., also filed a dissenting opinion.

NOTE.—At the present session of this court at Philadelphia, the same point arose in a Pittsburg case, and an opinion affirming that of Lowrie, J., was delivered by

WOODWARD, J.—The only question in this case arises upon the construction of the will of Judah Calt, deceased. After the usual introductory clause the testator says, "as to such worldly estate wherewith it has pleased God to intrust me, I dispose of the same as follows;" *Imprimis* relates to debts and funeral expenses; "Second, I will and devise that all my landed estate which I own in the County of Erie, as well as in other parts of the State of Pennsylvania and elsewhere, be disposed of as hereinafter described." He then goes on to make various devises to his niece, Eliza B. Ely, and, among others, the two lots in question, known as 367 and 368. In these devises to her there are no words of inheritance, condition or limitation, and no devise over of any of the property given to her. Is her estate under this will a life-estate or a fee simple? Carrying down the clauses of the will which I have quoted and connecting them with the devise to Eliza, it is apparent that he meant to give her his whole estate in these lots, and this conviction is riveted by the absence of any devise over. But may those clauses be thus brought down and connected? That they may has been so fully demonstrated lately in this court by my Brother Lowrie, in the case of *Shriver* vs. *Meyer*, that it would be a waste of time to do more than refer to that able opinion and the numerous authorities therein cited and discussed.

I take this opportunity to say, in regard to *Shriver* vs. *Meyer*, that finding on record (See 4 Harris's State Rep. 504) an opinion from a judge who is entitled to my profoundest deference, that the will there created only a life-estate, I paused long before I consented to Judge Lowrie's opinion that it created a fee. But I was constrained at last by the force not only of authority, but of reason to concur with him and our Bro. Lewis in overruling the former opinion of this court, and in declaring the estate devised a fee simple and not a life-estate. Subsequent reflection has confirmed me in the opinion finally settled in that case, an opinion abundantly sustained by the most approved authorities, and in accordance with the spirit of our legislature in the Act of 8th April, 1833, relating to last wills and testaments (sec. 9.